IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3527 OF 2006

1. Shri Vitthal Pralhad Jagdale and ors. ..Petitioners

Vs.

Shri Appaso Bhujappa Bhagate ..Respondent

Mr. N.J. Patil for petitioners.

CORAM: B.H. MARLAPALLE, J.

Date : August 7, 2006.

P.C.:

1. Heard Mr. Patil the learned counsel for the petitioners. The concurrent finding recorded by both the courts below regarding the prima facie case in favour of the plaintiff about his possession over the suit property does not call for any interference. The issue raised by the defendants regarding the deficit stamp duty can be considered only at the stage of evidence and that the said issue can be decided as the first issue along with all other issues. The defendants also had claimed that the plaintiff was required to file a suit for specific performance and, therefore, the suit filed for perpetual injunction could not have been entertained. The learned Judge of

the Appellate Court recorded his finding that from the plaintiff's pleading it emerges that he has paid the entire agreed consideration to the defendants as per the averments made in the plaint and, therefore, the requiremnt of Section 53(A) of the Transfer of Property Act were duly satisfied and hence, he was entitled to file a suit for perpetual injunction and in any case it was his choice.

2. The view taken by the courts below cannot be termed as perverse or palpably erroneous so as to call for interference in this petiton under Article 227 of the Constitution.

3. The petition is hereby rejected summarily.

(B.H. Marlapalle,J.)